

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327
THIS DOCUMENT RELATES TO: WAVE 5 CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**UNOPPOSED MOTION FOR EXTENSION OF *DAUBERT* DEADLINES
WITH RESPECT TO PLAINTIFFS' EXPERT WITNESS SCOTT A. GUELCHER, PH.D.**

Defendants Ethicon, Inc. and Johnson & Johnson (collectively, “Ethicon”), by counsel, submit this Unopposed Motion for Extension of *Daubert* Deadlines with respect to Plaintiffs’ Expert Witness Scott A. Guelcher, Ph.D. (“Unopposed Motion”). This Unopposed Motion follows the Joint Motion for Extension of *Daubert* Deadlines With Respect to Plaintiffs’ Expert Witness Scott A. Guelcher, Ph.D. filed on July 25, 2017 [ECF 4229], which has yet to be decided. The *Daubert* motion that is the subject of this Unopposed Motion is ready for filing upon action by the Court. In support of this Unopposed Motion, Ethicon states the following:

1. In relevant part, Pretrial Order # 248 provides that the close of discovery for Wave 5 cases is July 19, 2017, and that the parties must file any Wave 5 *Daubert* motions by August 15, 2017; any responses to such motions by August 29, 2017; and any replies in support of such motions by September 5, 2017.

2. Both Pretrial Order # 248 and the Federal Rules of Civil Procedure permit the Court to modify a scheduling order for good cause. *See* PTO # 248; Fed. R. Civ. P. 16(b)(4); LR Civ P. 16.1(f) (scheduling order may be modified for good cause by order).

3. Here, good cause exists to grant Ethicon's Unopposed Motion for an extension of *Daubert* deadlines with respect to Dr. Guelcher—who is a general causation expert witness for Plaintiffs' in this litigation. *See, e.g., Dawn Sequino, et al. v. Ethicon, Inc., et al.*, Order Granting Ethicon's Unopposed Mot. for Ext. of Time for Serving Case-Specific Expert Report and Filing of *Daubert* Mots. Aug. 11, 2016 [ECF No. 41].

4. On July 12, 2017, Plaintiffs served a Notice of Videotaped *de bene esse* Testimony of Scott Guelcher, Ph.D. [ECF 4124]. Plaintiffs' Notice indicates that "the *de bene esse* testimony of Dr. Scott Guelcher will be taken for all purposes in Wave 5," as well as "any and all purposes permitted by the Federal Rules of Civil Procedure, the rules of the MDL Court, and any other state or local rules that apply to this action." *Id.* the Plaintiffs scheduled the *De Bene Esse* deposition to follow immediately after the Wave 5 discovery deposition scheduled the same day.

5. On July 14, 2017, Ethicon filed a Motion for Protective Order Precluding *De Bene Esse* Deposition of Plaintiffs' Expert Witness Scott A. Guelcher, Ph.D., and supporting memorandum of law. *See* [ECF 4132, 4233].

6. On July 15, 2017, the parties agreed to postpone both the Wave 5 discovery deposition and Plaintiffs' *de bene esse* deposition of Dr. Guelcher pending a ruling on Ethicon's motion for protective order and to jointly seek an extension of *Daubert* deadlines for Dr. Guelcher. That July 15, 2017 Joint Motion [ECF 4229] has not yet been decided.

7. On July 24, 2017, Plaintiffs filed a Response in Opposition to Defendants' Memorandum of Law for Protective Order and Plaintiffs' Motion for a *De Bene Esse* Deposition of Dr. Guelcher. *See* [ECF 4226].

8. Following an August 9, 2017 hearing on the Ethicon Motion before Magistrate Eifert, Plaintiffs produced Dr. Guelcher for his Wave 5 discovery deposition on August 17, 2017. Ethicon completed the deposition and is now able to file the *Daubert* motion that is the subject of this Unopposed Motion, fourteen days after the original August 15 deadline.

9. For this reason, and pursuant to the parties' July 15, 2017 agreement, Ethicon requests that the Court enter an order permitting (i) Ethicon to file a *Daubert* motion regarding opinions and testing covered by Dr. Guelcher in his August 17, 2017 discovery deposition; (ii) Plaintiffs to file any responsive pleading within 14 days of the date on which Ethicon files this motion; and (iii) Ethicon to file any reply in support of said motion within 7 days of the filing of any responsive pleading. Ethicon's motion is ready for filing upon approval of this Unopposed Motion.

10. Ethicon represents that Plaintiffs do not oppose the relief sought by this Motion.

11. This extension is not sought for reason of delay or for any other improper purpose. As Dr. Guelcher functions solely as a general causation witness in this litigation, this extension will not affect any of the remaining deadlines under PTO # 248.

WHEREFORE, Ethicon respectfully requests that this Court grant this Unopposed Motion and enter an order modifying the deadlines for any *Daubert* motion, response, and reply regarding Dr. Guelcher as set forth above.

Respectfully submitted,

/s/ David B. Thomas

David B. Thomas (W.Va. Bar #3731)
Philip J. Combs (W.Va. Bar #6056)
Thomas Combs & Spann PLLC
300 Summers Street
Suite 1380 (25301)
P.O. Box 3824
Charleston, WV 25338
(304) 414-1800
dthomas@tcspllc.com

/s/ Christy D. Jones

Christy D. Jones
Butler Snow LLP
1020 Highland Colony Parkway
Suite 1400 (39157)
P.O. Box 6010
Ridgeland, MS 39158-6010
601.985.4523
christy.jones@butlersnow.com

COUNSEL FOR DEFENDANTS ETHICON, INC.
AND JOHNSON & JOHNSON

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327 JOSEPH R. GOODWIN U.S. DISTRICT JUDGE
THIS DOCUMENT RELATES TO: WAVE 5 CASES	

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

/s/ David B. Thomas

David B. Thomas (W.Va. Bar #3731)
Philip J. Combs (W.Va. Bar #6056)
Thomas Combs & Spann, PLLC
300 Summers Street, Suite 1380
P.O. Box 3824
Charleston, WV 25338-3824
(304) 414-1800